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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,138	02/11/2005	Pierrick Girard	3952-74	2457
23117 7590 02/27/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
PALO, FRANCIS T				
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3644				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/524,138

**Applicant(s)**

GIRARD ET AL.

**Examiner**

Francis T. Palo

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-49 is/are pending in the application.
- 4a) Of the above claim(s) 29-41, 43-46, 48 and 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-28, 42 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments, see Remarks, filed 11/12/07, with respect to the rejection(s) of claim(s) 21-28, 42 and 47 under **35 USC § 103** have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of **Brehm** (DE 3816865) 1989.

Applicants submit: **Anton** '317 does not teach; a reinforcing grid made from the group of biodegradable polymers recited in claim-21, nor the modified viscose thread grid recited in claim-22, nor the use of glue for fastening the grid as recited in claim-25, nor a support formed of thermobonded PLA-fibers recited in claims 27 and 28.

The examiner responds: **Brehm** '865 teaches a biodegradable plastic grid, that applicants disclose in the specification that EP-A-637641 teaches a non-woven composed of filaments produced entirely of a polymer or a polymer mixture derived from lactic acid [0008], and that the instant modified viscose thread grid corresponds to the grid sold under the reference 4032/71 and a PLA grid is sold by UNITIKA [0018]. Further, applicants final comments appear to be directed to a process for thermobonding fibers rather than the use of thermobonding fibers as claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 21-26 and 47** are rejected under 35 U.S.C. 103(a),  
as being unpatentable over **Anton** (SI 9600317) 1998,  
in view of **Brehm** (DE 3816865 (1988) and **Applicants Specification**.

Regarding independent **claims 21 and 22**:

Applicants admit in the Response filed 11/12/07 that **Anton** '317 teaches a biodegradable support which is reinforced with a biodegradable textile grid; Anton is silent however as to the grid comprising a biodegradable polymer from the group claimed.

**Brehm** '865 teaches a biodegradable support having a biodegradable plastic grid (4); that is, a support having a biodegradable polymer grid rather than a biodegradable textile grid as taught by Anton in the newer reference.

It is submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted the biodegradable **polymer** grid of Brehm for the biodegradable **textile** grid of Anton; as where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Accordingly, applicants claim a combination that only unites old elements (**polymer grid**) with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396).

Accordingly, since the applicants have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a),

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because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Further, while Brehm is not specific to the biodegradable polymers as claimed, applicants disclose the modified viscose thread grid corresponds to a 4032/71 grid, while the PLA grid corresponds to the UNITIKA product [0018].

It is submitted that it would have been obvious to further modify Anton '317 with the grids sold by CHAVANOZ INDUSTRIE and UNITIKA as these products represent the commercial availability of biodegradable polymer products (grids) for evaluation by one of ordinary skill in the art of reinforced supports; and that further such modification is obvious as discussed above, because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

In summary, it is submitted the instant claim is obvious in view of Anton '317 as modified by Brehm '865 and further in view of applicants technical disclosure regarding the grid at [0018].

Regarding **claims 23, 24, 26 and 47**:

The discussion above regarding claim-21 is relied upon.

It is logical to expect that the grid of Anton as modified, would be capable of the grid weight claimed, as both Anton as modified and the instant invention teach biodegradable polymers ; further, the instant specification [0018]/[0019] discloses corresponding commercially available grids which would be expected to fall within the claimed weight range (claim-23).

Anton depicts a non-woven layer support with a grid secured thereto one face of the support (readable on claims 24, 26 and 47).

Regarding **claim-25**:

The discussion above regarding claim-21 is relied upon.

The examiner maintains that the spattering of latex onto the support of Anton inadvertently glues the grid as recited in the claim; and, the examiner further takes official notice that the practice of gluing grids onto supports is well known in the art, and would have been an obvious modification to Anton at the time the instant invention was made, as a functional equivalent attachment means.

**Claims 27, 28 and 42** are rejected under 35 U.S.C. 103(a), as being unpatentable over **Anton** and **Brehm** as applied to claim-21 above, and further in view of **Weber** (US 5,163,247) 1992.

Regarding **claims 27, 28 and 42**:

The discussion above regarding claim-21 is relied upon.

Anton '317 is not specific to thermobonding fibers as claimed.

**Weber** '247 teaches synthetic reinforcing fibers may be incorporated into a fibrous cellulose web (col.-3, line-40 thereabout).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the support of Anton to include reinforcing fibers in the range claimed, as Weber teaches enhancing the integrity and useful life of the cellulose-based support by the addition of synthetic reinforcing fibers such as polyesters, which are thermosetting and therefore read as thermobonding fibers as claimed.

Further, applicants disclose [0008] document EP-A-637641 teaches a non-woven support composed of filaments produced entirely of a polymer or a polymer mixture derived from lactic acid.

It is further submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have utilized the lactic acid derived filaments as taught by the EP '641 reference, in the support of Anton as modified by Brehm and Weber; as where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Accordingly, applicants claim a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396).

Accordingly, since the applicants have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Francis T. Palo/  
Primary Examiner  
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